IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Crl.Rev.Pet.No. 3414 of 2007()

CRIME NO.195/04 OF KOODAL POLICE STATION
CC.174/05 OF JFCM-I, PATHANAMTHITTA
CRA.329/05 OF ADDL.SESSIONS COURT, FAST TRACK-II, PATHANAMTHITTA

REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

VIJAYAKUMAR, S/O.SUKUMARAN, THEKKEMURI,
THEKKETHUNDIYIL VEEDU, KOODAL MURI,
NEDUMONKAVU, KOODAL VILLAGE.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS: RESPONDENT/COMPLAINANT/STATE

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3414 OF 2007 B

Dated this the 3rd day of October, 2007

O R D E R

The revision petitioner, who was the accused in crime No.195/04 of Koodal Police Station for offences punishable under sections 341, 326 and 294(b) IPC, assailed the conviction entered and the sentence passed against him by the courts below for offences punishable under sections 341 and 326 IPC.

2. The case of the prosecution can be summarized as follows:-

On 30.12.04 at about 8 p.m. while PW1(Raveendran) was walking along the Nedumankavu-Chandanappally road, the accused wrongfully restrained PW1 and caught hold of him and pushed him down and thereafter bit on the pendulous part of the left ear lobe of PW1 who thereby lost the said part of the ear lobe.

3. On the accused pleading not guilty to the charge framed against him by the learned Magistrate for offences punishable under sections 341 and 326 IPC the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 8 witnesses as PWs 1 to 8 and

got marked 5 documents as Exts.P1 to P5.

4. The accused denied the incriminating circumstances appearing against him in the evidence for the prosecution and maintained his innocence. He examined one defence witness as DW1.

5. The learned Magistrate after trial, as per judgment dated 6.10.05 found the revision petitioner guilty of the offences charged against him and sentenced him to simple imprisonment for one month under section 341 IPC and simple imprisonment for one year and to pay a fine of Rs.5,000/- under section 326 IPC with a default sentence of simple imprisonment for three months. The substantive sentences were directed to run concurrently. A sum of Rs.4,000/- was directed to be given to PW1, the injured, as compensation under section 357(1) Cr.P.C.

6. Eventhough the revision petitioner preferred an appeal before the Sessions Court, Pathanamthitta, as Crl.Appeal No.329/05, the Additional Sessions Court, Fast Track-II, Pathanamthitta as per judgment dated 15.5.07 dismissed the appeal. Hence this revision.

7. Eventhough the learned counsel for the revision

petitioner assailed the conviction recorded concurrently against him by the courts below, in as much as the conviction has been entered after a careful evaluation of the oral and documentary evidence in the case, this court, sitting in the rarefied revisional jurisdiction, will be loathe to interfere with the said conviction which is accordingly confirmed.

8. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. The facts of the case will show that the occurrence took place on the spur of the moment by PW1 initially insulting the accused using obscene language in retort which the accused was mounting an aggression on PW1 resulting in the accused biting and severing the pendulous portion of the left ear lobe of PW1. Having regard to the facts and circumstances of the case, I do not think that the revision petitioner deserves penal servitude by way of incarceration. I am of the view that an appropriate fine and compensation will meet the ends of justice. Accordingly, the sentence imposed on the revision petitioner is set aside and for the conviction under section 341 IPC, he is sentenced to a fine of Rs.1,000/- (Rupees one thousand only) and on default to pay the

fine, to suffer simple imprisonment for one month and for the conviction under section 326 IPC, the revision petitioner shall undergo imprisonment till the rising of the court and shall pay a sum of Rs.20,000/- (Rupees twenty thousand only) as compensation to PW1 who has lost his ear lobe. The fine amount as well as the compensation shall be remitted before the trial court within 45 days. If the compensation amount is not remitted as aforesaid, the revision petitioner shall suffer simple imprisonment for two months by way of default sentence.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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